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No. 86-1911

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CASA LINDA PRESBYTERIAN CHURCH
IN AMERICA, ET AL,

Petitioners

vs.

GRACE UNION PRESBYTERY, INC., ET AL,

Respondents

PETITIONERS' REPLY TO RESPONDENTS BRIEF IN OPPOSITION TO CERTIORARI

VIAL, HAMILTON, KOCH & KNOX
Jeffrey S. Lynch
(Counsel of Record)
D. Bradley Dickinson
1500 RepublicBank Tower
Dallas, Texas 75201
(214) 922-9393

GRANVILLE DUTTON
337 Meadows Building
5646 Milton
Dallas, Texas 75206
(214) 691-7531

ATTORNEYS FOR PETITIONERS

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The Texas court ignored the clear mandate of both *Jones* and *Watson* that the deference rule may constitutionally be applied only where the church property involved has not been dedicated to the purpose of maintaining definite religious doctrines. *Watson* first propounded this constitutional safeguard as follows:

> . . . an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles . . . the obvious duty of the court . . . (is) to see that the property is not diverted from the trust which is thus attached to its use.

Watson v. Jones, 80 U.S. at 723

Although the Texas court cites *Jones* as the reason for eliminating this constitutional protection of religious freedom, this Court in that case specifically reaffirmed the *Watson* safegaurd as follows:

> Indeed, even in *Watson v. Jones,* a common law decision heavily relied upon by the dissent, Mr. Justice Miller, in speaking for the court, stated that regardless of the form of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will or other instrument of church property ownership.

Jones v. Wolf, 443 U.S. at 603

Respondents' wording in this counterpoint that "the deed of grant" did not so dedicate the property in this case cleverly conceals the fact that here the instruments so dedicating the property are the charter and by-laws of the non-profit corporation holding title to the church property.

The Texas Court of Appeals did *not,* as Respondents claim in this counterpoint, follow previous Texas decisions. *Brown v. Clark,* 116 S.W. 360 (Tex. 1909), cited by Respondents as the case beginning the deference rule in Texas, correctly applied the *Watson* safeguard by first noting that

> . . . there is not attached to that property any trust either -express or implied.

Brown v. Clark, 116 S.W. at 364

Respondents conclude Counterpoint No. 1 with what is tantamount to an assertion that this Court has for over one hundred years mandated a constitutional safeguard for religious freedom that cannot be constitutionally invoked. Respondents assert that it would be unconstitutional for this Court to determine the uncontested facts that the subject church property is dedicated to a specific religious purpose and that the property would be diverted from that purpose if acquired by the group designated by Respondent Presbytery.

II.

Respondents' Counterpoint No. 2 seems to be a restatement of the first counterpoint.

III.

Counterpoint No. 3 introduces the spurious issue of "the identity of the true congregation". Under the *Watson* principle of seeing that the property is not diverted from the trust attached to its use, the only question of identity is who is qualified, willing and interested in carrying out the trust. It is uncontested that only Petitioners (although labeled by Respondents as "Schismatics"), are qualified and willing to maintain that doctrine and are today standing in court. Respondents with their Statement of Belief, nine confessions and a Book of Church Order are neither qualified nor willing to maintain a church whose doctrine and government are prescribed by the Holy Scriptures and the Westminister Confession of Faith.

IV.

Actually all three of Respondents' counterpoints are germane to Petitioners' First Reason For Granting the Writ; therefore we will confine this reply to Respondents' objections to that reason. Respondents' arguments may be summarized into three categories: First, a vague attack on Petitioners which attempts to make Petitioners' clear position under *Watson* and *Jones* appear ridiculous; second, a long defense of the deference rule which carefully avoids the basic issue in this case, i.e., whether the deference rule is applicable to church property dedicated to a specific religious doctrine; and a dissertation on Texas law which includes a generous portion of ecclesiastical "law" that is outside the record, untrue and not a proper subject for judicial inquiry according to Respondents' own contentions. Respondents' attempt to impugn the "Schismatics' (Petitioners') own religious beliefs" as being those for which the trust was established only confirms the Petitioners' qualification and willingness to uphold the Holy Scriptures and the Westminister Confession of Faith. Respondents' allegation that the "Schismatics (Petitioners) first condemn the idea of any sort of trust being present, then turn around and state there was a trust of sorts" ridicules but does not hide the important truth: There was no implied trust in favor of Respondents; there is an express trust that only Petitioners can and will uphold, and under which they hold title to the property.

Contrary to Respondents' assertion that the application of the *Watson* and *Jones* dedication principle would drag the Court into a searching inquiry into an ecclesiastical question, the record is clear that Petitioners' charter and by-laws in effect at all times material to this case (and still in effect) continue to dedicate the property to the same trust under which it has been and is held. Petitioners believe this is conclusive evidence that they meet the *Watson* test that

> So long as there are persons qualified within the meaning of the original dedication, and who are also willing to

> teach the doctrines or principles described in the act of dedication, and so long as there is anyone interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses . . .

Watson v. Jones, 80 U.S. at 723

Petitioners did not institute this lawsuit; Respondents did in an attempt to divert the property to other and different uses, namely, to sustain and propagate Respondents' Statement of Belief, nine confessions and Book of Church Order.

Respondents allege that Schismatics' (Petitioners') arguments and authorities are "replete with inaccuracies" but provide not a single example of such alleged inaccuracies. Respondents' assertion that Schismatics' (Petitioners') argument and authorities are clearly *in extremis,* if true, would mean that the *Watson* and *Jones* principles upholding the right of an association of individuals to dedicate property to maintain a definite religious doctrine is at the point of death. Petitioners trust that the Courts' response to this dire assessment will be: "Not so long as this Court sits".

Respondents' "departure from doctrine" straw man appears to be set up to try to distract this Court from the real issue in this case: The deference rule of *Watson* and *Jones* is not applicable where an attempt is made to divert church property from the use to which it is dedicated. In this situation, the test is who would provide "adherence to doctrine".

Respondents' long defense of the "Deference Rule" is not germane to Petitioners' Reason I for granting the Writ. Here Petitioners do not attack the deference rule as promulgated in *Watson;* Petitioners do object to the Texas courts contravening both *Watson* and *Jones* by holding that the rule may be applied without regard to whether the property is held either by an independent congregational church or for maintaining a specific religious doctrine.

Respondents' vague description of Texas law relies on Texas' adoption of *Watson v. Jones* but again carefully avoids any discussion of that case's holding out that the "deference rule" is not applicable to church property which has been, by deed, will or other instrument by which the property is held, devoted to some specific religious doctrine or belief. Respondents' assertion that Texas recognizes that civil courts have no jurisdiction over purely ecclesiastical matters does not come to grips with the issue in this case. Here we deal with a civil matter: Ownership of property.

Respondents' tenuous attempt to weave a "Pastoral Letter" into a part of the Constitution of the PCUS ignores this court's finding relative to the PCUS as follows:

> . . . the constitution of the general church, the Book of Church Order, concerning ownership and control of property, failed to reveal any language of trust in favor of the general church.

Jones v. Wolf, 443 U.S. at 601

Respondents' final allegation that we Petitioners "incorporated our wrongdoing" is also outside the record and untrue. Long before the action Respondents complain of, Petitioners openly and legally, and in accord with this Court's mandate, dedicated the subject property to maintaining a church whose doctrine, tenants and form of government were dedicated to those prescribed by the Holy Scripture and Westminister Confession of Faith. Petitioners trust that Respondents' inflammatory, untrue and outside-the-record statements will not deter this Court from carrying out its own mandate and preventing this property from being diverted from its dedicated use.

V.

Respondents' doubt that the federal issue in this case was presented to the Texas State courts can be eliminated by referring to Point of Error No. 7 in Petitioners' Brief to the Court of Appeals and by Ground No. 7 in its Motion for Rehearing to that court and to Points of Error Nos. 2 and 3 in both Petitioners Application for Writ of Error and Motion for Rehearing to the Texas Supreme Court.

VI.

Respondents erroneously allege Petitioners are a dissident faction formerly belonging to Casa Linda Presbyterian Church; actually Petitioners are members and trustees of the Casa Linda Presbyterian Church Corporation who are defending the trust under which the property is held.

Respondents complain that the corporate meeting at which the subject action was taken "was not in compliance with church law". There is no church law governing corporate meetings and if there were, it would not be an appropriate inquiry by a civil court. The record is clear that the meeting and the action taken were in accord with the law of the State of Texas under which the association was incorporated.

Respondents' assertion that there are two groups claiming to be Casa Linda Presbyterian Church raises another false issue. One group is that designated by Respondent Presbytery (on the basis of postcards returned to the Presbytery) "recognized as the Casa Linda Presbyterian Church of Dallas, Texas, a constituent congregation of Grace Union Presbytery". This group adheres to doctrine and government according to their Statement of Belief, nine confessions and a Book of Church Order. The other group is the Casa Linda Presbyterian Church of Dallas, Texas, a Texas Corporation holding title for the Casa Linda Presbyterian Church of the Presbyterian Church in

America. The latter group recognizes that it holds that title to maintain a church, Presbyterian in its doctrines, tenents and form of government as prescribed by the Holy Scriptures and the Westminister Confession of Faith.

Respondents emphasize that "the Trial Court took the case away from the jury and decided in Respondents' favor", but fail to point out that the Court of Appeals found no evidence to support the Trial Court's holding that Respondent Presbytery's Administrative Commission "did legally determine and declare that the Plaintiff . . . was the beneficial owner of all the real and personal property . . . " The Court of Appeals then relied upon their "deference rule" to find for Respondents without considering the trust under which Petitioners hold the property. It is significant that Respondents do not challenge Petitioners' reliance on this Court's reasoning in *Larkin v. Grendel's Den, Inc.* 459 U.S. 116 (1986), to the effect that the Framers of the Constitution " . . . did not set up a system of government in which important discretionary governmental powers would be delegated or shared with religious institutions." To do so would put the spotlight on the Texas court's reliance on an ecclesiastical court action to determine ownership of property.

In order to avoid doubtful titles in all churches, congregational as well as hierarchical, dedicated and undedicated, this Texas "deference rule", asserted to be constitutional without qualifications, should be repudiated by this Court and the trust under which petitioners hold title should be upheld by reversing the Texas Court of Appeals.

Conclusion

Wherefore, Petitioners respectfully re-urge the Court, for all of the reasons set forth in our Petition and this Reply, to grant a Writ of Certiorari and to reverse the decision below.

Respectfully submitted,

VIAL, HAMILTON, KOCH & KNOX
Jeffrey S. Lynch
(Counsel of Record)
D. Bradley Dickinson
1500 RepublicBank Tower
Dallas, Texas 75201
(214) 922-9393

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337 Meadows Building
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